

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ORDER

On November 21, 2008, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on December 3 and 4, 2008. The issues raised in plaintiff's exceptions, as well as his motions and letters of November 20 and December 24, 2008, and January 5 and 12, 2009, were adequately addressed in the report and recommendation. The court specifically notes plaintiff's motion to compel discovery has no merit. As set forth in the December 29, 2008 response of CMS defendants, plaintiff has previously received copies of his extensive medical records, and the X-ray of his lungs that he seeks is unrelated to his medical claims regarding his feet, the only remaining issue in this case.

The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of November 21, 2008, is adopted. [214] It is further

ORDERED that defendant Murphy's motion for judgment on the pleadings is granted. [207] It is further

ORDERED that the motions of defendants Vickers, Hardman, Sulltrop, Swartz, Conley and Cofield for summary judgment are granted and plaintiff's remaining claims are dismissed.

[171, 216] It is further

ORDERED that plaintiff's motion for leave to file objections out-of-time is granted.

[225] It is further

ORDERED that plaintiff's motions seeking summary judgment, appointment of counsel, a wheelchair pusher and to compel discovery are denied. [153, 194, 205, 211, 212, 226]

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: January 23, 2009
Jefferson City, Missouri